IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3057 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VAJUBHAI DEVSHANKAR MEHTA - Petitioner(s)

Versus

DISTRICT DEVELOPMENT OFFICER & 2 - Respondent(s)

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Appearance :

MR MRUGEN K PUROHIT for Petitioner(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 2,
RULE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/11/2005

ORAL JUDGMENT

In the present petition, the petitioner who was an elected Sarpanch of village Vavdi Gram Panchayat has challenged the order dated 18th October 2002 passed by the

District Development Officer. The petitioner has also challenged the order passed by the Additional Development Commissioner on 9.1.2003 by which the appeal of the petitioner against the order passed by the District Development Officer was rejected.

2. The petitioner was the elected Sarpanch of Vavdi Gram Panchayat, election for which was held in December 2001. A show cause notice came to be issued against the petitioner by the District Development Officer on 27.8.2002. In the said show cause notice, it was indicated that a criminal case was filed against the petitioner for alleged incident of 14.8.2000 in which allegations were made against the petitioner of having committed offences punishable under section 323 read with 114 of the Indian Penal Code. It is further stated that on 3.7.2002, he was detained under the provisions of section 110 of the Criminal Procedure Code and kept in judicial custody. The petitioner was called upon to show cause why he should not be suspended as Sarpanch in view of the provisions contained in section 59(1) of the Gujarat Panchayats Act, 1993 (hereinafter to be referred to as “the said Act”). The petitioner replied to the show cause notice by two communications made to the

authorities which were made in August 2002 and on 5.9.2002. The petitioner contended that the offences alleged against him were not offences involving moral turpitude. It was further contended that the petitioner has not committed any offence and that he was falsely involved in these criminal cases by interested persons since the petitioner is being elected as Sarpanch of the village since 17 years.

3. The District Development Officer, however, by his impugned order dated 18.10.2002 was pleased to suspend the petitioner in exercise of powers under section 59(1) of the said Act. Though not made part of the show cause notice issued against the petitioner, the District Development Officer utilised filing of a complaint against the petitioner on 3rd July 2002 alleging his involvement in offences punishable under sections 323, 324 and 326 read with section 114 of the Indian Penal Code. On the basis that the petitioner was arrested and kept in custody from 3.7.2002 to 17.7.2002, the District Development Officer was pleased to suspend the petitioner. In the impugned order, it was also recorded that the representations of the petitioner in response to the show cause notice have been considered

and after following the principles of natural justice, the District Development Officer finding that the defence of the petitioner is not possible to be accepted, passed the order in question.

4. As noted earlier, the factum of filing of the complaint against the petitioner on 3.7.2002 was never indicated in the show cause notice issued by the District Development Officer. This was, however, utilised for passing the order of suspension. In fact this was the only ground on which the petitioner came to be suspended. The District Development Officer observed that the representation of the petitioner cannot be accepted. It was observed that principles of natural justice have been followed. It is difficult to understand as to what would be the relevance of the representation of the petitioner when the ground being utilised against him for his suspension was never indicated in the show cause notice. The District Development Officer has also held that the petitioner is involved in offence involving moral turpitude.

5. I find that the order passed by the District Development Officer cannot be sustained. The petitioner

who was discharging his duties as Sarpanch since many years is admittedly facing certain criminal cases. The question is whether mere filing of such cases or pendency thereof would be sufficient to permit the District Development Officer to suspend the petitioner.

6. Section 59 of the said Act reads as follows:

> “59.(1) The District Development Officer may suspend from office the Sarpanch or the Upa-Sarpanch of a village panchayat against whom any criminal proceedings in respect of an offence involving moral turpitude have been instituted or who has been detained in a prison during trial for any offence or who is undergoing such sentence of imprisonment as would not disqualify him from continuing as a member of the panchayat under section 30 or who has been detained under any law relating to preventive detention for the time being in force.
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> (2) Where any Sarpanch or Upa-Sarpanch, has been suspended under sub-section (1) another member of the village panchayat shall, subject to the conditions to which the election of the Sarpanch or Upa-Sarpanch, so suspended was subject, be elected to perform all the duties and exercise all the powers of a Sarpanch or Upa-Sarpanch, during the period for which such suspension continues.
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> (3) An appeal shall lie against an order passed under sub-section (1) to the State Government. Such appeal shall be made within a period of thirty days from the date of the order.”

It can thus be seen that sub-section (1) of section 59 of the said Act empowers the District Development Officer to

suspend an elected Sarpanch or Upa-Sarpanch of village Panchayat against whom any criminal proceedings in respect of an offence involving moral turpitude have been instituted or he has been detained in prison during trial for any offence or who is undergoing such sentence or imprisonment as would not disqualify him from continuing as a member of the Panchayat under section 30 or he has been detained under any law relating to preventive detention.

7. Learned single Judge of this Court in the case of Narabhai Veljibhai Chaudhary v. R.S. Vaghela, 1997 (1) GLR 599 observed that a Sarpanch cannot be suspended just on institution of criminal case. Whether the act constitute an offence of moral turpitude, there cannot be strait-jacket formula and it depends on various factors including the manner and circumstances in which the offence alleged to have been committed. It was further observed that the rule of suspension of a person holding public office is based on a public policy to maintain purity in public life. However, this power in current aggressive competitive politics must be exercised with circumspection. It was observed that false implication has also become hazards of public life putting more

pressure on the judiciary to scrutinize such cases with more care and caution.

8. This was highlighted in a subsequent decision in the case of B.S.Malek v. DDO, Mehsana, 1999 (2) GLH 963 wherein the learned single Judge was pleased to quash the order passed by the authorities suspending the Sarpanch. It was observed that it is clear that the scope of two sections (sections 57 and 59 of the said Act) for the purpose of removal and suspension are entirely different. It was further observed that the impugned order has been passed by the concerned authority without addressing itself to the ground germane to passing of the order of removal and the order proceeds on the basis that the petitioner was involved in an offence of moral turpitude.

9. In the present case, one finds that the District Development Officer did not advert to the important aspects of the matter before passing the impugned order. Firstly, the incident which was utilized to suspend the petitioner was never made part of the show cause notice. This deprived the petitioner of pointing out the relevant factors which the District Development Officer could have taken into consideration while taking a decision whether

the pendnecy of a complaint itself should be utilized to suspend the petitioner. Independently of this also, the District Development Officer has not examined the nature of allegations made against the petitioner in the said complaint. The petitioner has been contending that he is being falsely implicated by the rival parties on account of his successful tenure as Sarpanch since more than 17 years. All these aspects were never taken into account by the District Development Officer while passing the impugned order.

10. In the result, I find that the orders under challenge cannot be sustained. The order passed by the District Development Officer as upheld by the Additional Development Commissioner is set aside. Rule is made absolute accordingly with no order as to costs.

Direct service to respondent Nos.1 and 3 permitted.

(Akil Kureshi, J.)

(vjn)